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MUMTAZ MEAT & MARINE FOODS SDN BHD v. YAQIN MART SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
AZLAN SULAIMAN JC
[ORIGINATING SUMMONS NO: WA-24IP-3-02-2022]
B 8 MARCH 2023

Abstract – *The plaintiff's attempt to invalidate the defendant's mark under s. 47 of the Trademarks Act 2019 is felled by the consent letter and the doctrine of res judicata, the latter of which renders the action an abuse of process. The consent letter issued by the plaintiff's director, unequivocally consenting to the defendant registering the mark despite the close resemblance with the plaintiff's mark, negated any fraudulent intent or collusion or conspiracy to procure the registration of the defendant's mark.*

INTELLECTUAL PROPERTY: *Trademark – Registered trademark – Application to invalidate and remove registered trademark from Register – Similar trademark – Issuance of consent letter by director of applicant – Whether director authorised to issue consent letter – Allegation of fraudulent intent established – Whether assumption and belief that consent letter was genuine backed by rule in Turquand's case – Whether resolution by applicant's board required for issuance of consent letter – Whether action res judicata and abuse of process of court – Trademarks Act 2019, s. 47*

By the amended originating summons ('OS'), the plaintiff, applied under s. 47 of the Trademarks Act 2019 ('TMA'), to invalidate and remove the defendant's registered trademark from the Register. The plaintiff was founded by Mohamad Zainol ('Zainol') and Mumthaj Begum ('Mumthaj'), who were married at the time but divorced in late 2018. The plaintiff was engaged in farming, slaughtering, processing and marketing of organic and non-chemical halal chickens, halal frozen foods, halal meat, ready to eat meals, aromatic drinks and agro-based merchandise. To gain a presence and foothold in the halal food market and as a business and marketing strategy, from way back in 2006, the plaintiff allowed its agents and distributors to use the plaintiff's mark, at the time unregistered, on the signboard of their business premises. One of the independent businesses that used the plaintiff's mark at its retail outlet was a business called Yakin Preserved Food, set up in December 2007 by Zainol and Jaludin ('Jaludin'). Yakin Preserved Food then evolved over time into the defendant, Yaqin Mart Sdn Bhd. Jaludin, his wife, Tengku Harishah, and son, Mohd Hazwan, were and had been the defendant's only directors and shareholders. The plaintiff's mark was

registered on 11 March 2013 in class 29 in respect of meat, fish, poultry, vegetables, jams, edible oil, chicken burger, meat burger and fish burger. The defendant's mark was registered on 8 October 2018 in class 35 in respect of retail and convenience stores. The plaintiff's mark was for goods; the defendant's mark was for services. To defend the registration of the defendant's mark against the plaintiff's application for invalidation and removal of it from the Register, the defendant predominantly relied on a letter dated 3 September 2018 ('consent letter') that the plaintiff issued on its letterhead. However, the plaintiff contended that Zainol was not authorised to issue the consent letter or give any permission to the defendant to use the plaintiff's mark, and the defendant did not produce any resolution of the plaintiff's board to authorise the defendant to use the plaintiff's mark or authorise Zainol to issue the consent letter and therefore, alleged that there was fraud and/or misrepresentation in the registration of the defendant's mark.

Held (dismissing OS with costs):

(1) The plaintiff, while not denying the existence of the consent letter or that the plaintiff had issued it to the defendant, objected to Zainol's authority to issue it, alleging that it was issued without the plaintiff's knowledge or without being backed by a board resolution. The burden was therefore on the plaintiff to prove that Zainol did not have the authority to issue it. The order restraining Zainol from, *inter alia*, being a director of the plaintiff and attending to its affairs, adduced by the plaintiff, was clearly obtained after the consent letter was issued. Hence, at face value, Zainol had the authority to issue the consent letter at the time it was issued. (paras 19 & 20)

(2) It was the plaintiff's practice and marketing strategy to allow its agents and distributors from way back in 2006 to use the plaintiff's mark on the signboard of their business premises. Over 200 retail outlets did that. There was no hint or suggestion from the plaintiff that board resolutions were needed for any of that. The plaintiff also admitted in its pernyataan tuntutan terpinda filed in a civil suit ('2020 civil suit'), that Zainol was the plaintiff's managing director from 2006 to 2018. As the managing director, he had that authority. If the plaintiff wished to disavow the validity of the consent letter by alleging that Zainol had no authority to issue it and had not obtained a board resolution, then there must be direct proceedings specifically for that purpose. The plaintiff could not use this action to collaterally challenge the validity of the consent letter, especially without bringing Zainol in as a party. (paras 23, 24 & 48)

(3) As Jaludin, Tengku Harishah, Hazwan, Yakin Preserved Food and Yaqin Mart Sdn Bhd had been dealing with Zainol and the plaintiff for around 15 years before this action was filed, it was only reasonable to hold that they were entitled to assume and believe that the consent letter

was genuine. The plaintiff's suggestion that the breakdown of marriage between Zainol and Mumthaj could be used as evidence of fraud or wrongdoing by the defendant was misguided; the divorce was highly personal between them and had nothing to do with the defendant. (para 25)

(4) The assumption and belief that the consent letter was genuine was further backed by the rule in *Turquand*'s case that, unless the plaintiff was able to establish that the defendant knew or ought to have known or suspected that the consent letter was irregular or may be tainted, the defendant was entitled to assume that the consent letter was genuine and that Zainol had the authority to issue it. The consent letter was signed by Zainol as the plaintiff's 'pengarah urusan', whom Jaludin, Tengku Harishah and the defendant had been dealing with since 2007. It could also be reasonably assumed that Jaludin, Tengku Harishah and the defendant knew that Zainol and Mumthaj were the only directors and shareholders of the plaintiff. As there was no evidence whatsoever that the defendant knew of or was informed of their divorce, it was reasonably safe to assume that the defendant might still have believed that they were still married when the consent letter was issued. (paras 26 & 31-33)

(5) The Registrar's statement showed that the defendant did not submit the consent letter with its initial application, but instead adduced it on the Registrar's request, after obtaining it from Zainol. This mitigated against any allegation of fraudulent intent from the outset by the defendant. The plaintiff also failed to allege and prove that the defendant had colluded or conspired with Zainol to procure the consent letter and registration of the defendant's mark. (paras 40 & 41)

(6) The 2020 civil suit was filed by the plaintiff for trademark infringement and passing off against Azzainmart Sdn Bhd, Jaludin, Tengku Harishah and Hazwan, Zainol and Nor Hidayah Jaludin. The allegations raised in the 2020 civil suit were similar to the allegations made in the present action. Further, in the 2020 civil suit, the plaintiff added Zainol as a sixth defendant some ten months after it was filed. It could have done the same with the defendant here, more so when the individual directors and shareholders of the defendant here were already parties to the 2020 civil suit. The plaintiff's claim in the civil suit was dismissed just weeks after this action was filed. As the allegations against the defendant here could have been raised in the 2020 civil suit and given the close nexus between the defendants in the 2020 civil suit and the defendant here, this action was caught by the doctrine of *res judicata* and was an abuse of the process of the court. (paras 51, 52, 54, 58 & 63)

Case(s) referred to:

Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd [1995] 3 CLJ 783 SC ***(refd)***
Dato' Sivananthan Shanmugam v. Artisan Fokus Sdn Bhd [2015] 2 CLJ 1062 CA ***(refd)***
"ELBA" SpA v. Fiamma Sdn Bhd [2008] 8 CLJ 202 HC ***(dist)***
Hai-O Enterprise Bhd v. Nguang Chan [1992] 4 CLJ 1985; [1992] 2 CLJ (Rep) 436 HC ***(refd)***
Henderson v. Henderson [1843] 3 Hare 100 ***(refd)***
Ooi Meng Khin v. Amanah Scotts Properties (KL) Sdn Bhd & Another Appeal [2014] 1 LNS 719 CA ***(refd)***
Pekan Nenas Industries Sdn Bhd v. Chang Ching Chuen & Ors [1998] 1 CLJ 793 FC ***(refd)***
Regent Pumps Pty Ltd & Anor v. Keylargo Industrial Sdn Bhd [2009] 2 CLJ 303 HC ***(dist)***
Royal British Bank v. Turquand [1843-60] All ER Rep 435 ***(refd)***

Legislation referred to:

Trademarks Act 2019, ss. 23(5)(a), 24(3)(b), 47(3)(a), (4), (6)

For the plaintiff - Arham Rahimy & Nur Aziatul Nadia Roslan; M/s Aziatul & Co
For the defendant - Megat Muslehuddin Megat Radzuan; M/s Afiq & Partners

Reported by S Barathi

JUDGMENT

Azlan Sulaiman JC:

Overview

[1] By the amended originating summons ("the OS"), the plaintiff, the owner of registered Trademark No: 2013003678 ("the plaintiff's mark") that looks like this:

Applies under s. 47 of the Trademarks Act, 2019 ("the Act"), to invalidate and remove the defendant's registered Trademark No: 2018012520 ("the defendant's mark") below from the Register:

[2] I dismissed the OS on two main grounds. Firstly, there was evidence of the plaintiff's consent to the registration of the defendant's mark. Secondly, the OS was an abuse of the process of the court on the doctrine of *res judicata*.

A **First Ground: The Plaintiffs Consent To The Defendant's Mark**

Salient Facts

[3] The plaintiff was incorporated on 24 May 2006, and is engaged in farming, slaughtering, processing and marketing of organic and non-chemical
B halal chickens, halal frozen foods, halal meat ready to eat meals, aromatic drinks and agro-based merchandise. The plaintiff was founded by Mohamad Zainol bin Ahmad Haja ("Zainol") and Mumthaj Begum binti Abdul Razak ("Mumthaj"). They were at the time married. However, they divorced in late 2018.

C **[4]** The records of the Companies Commission of Malaysia adduced show that Zainol was a director of the plaintiff from 24 May 2006 to 18 March 2011 and again from 4 December 2013 to 31 December 2019, and until now holds a 10% shareholding in the plaintiff. Even though item 3(b) of the plaintiff's articles of association state that she was one of the plaintiff's first
D directors, on record Mumthaj was appointed a director of the plaintiff only on 9 July 2012. She remains a director of the plaintiff and holds an 88% shareholding in the plaintiff.

[5] To gain a presence and foothold in the halal food market (particularly halal chicken) and as a business and marketing strategy, from way back in
E 2006 the plaintiff allowed its agents and distributors to use the plaintiff's mark (at the time unregistered) on the signboard of their business premises. By that, the plaintiff enabled its product to be marketed nationwide without the capital expenditure usually associated with opening multiple retail outlets. According to one of the Sinar Harian articles adduced, there was at
F one time as many as 260 retail outlets nationwide selling the plaintiff's product.

[6] One of the independent businesses that used the plaintiff's mark at its retail outlet was a business called Yakin Preserved Food. It was set up in December 2007 by Zainol and Jaludin bin Ibrahim ("Jaludin"). Its business
G was "membekal dan menjual makanan segar dan beku, bekal barangan runcit". Yakin Preserved Food then evolved over time into the defendant, Yaqin Mart Sdn Bhd, which was formed in August 2016. The nature of the defendant's business is 'other food services activities, other management consultancy, wholesale of a variety of goods without any particular
H specialisation'. Jaludin together with his wife, Tengku Harishah binti Tengku Chek ("Tengku Harishah") and son, Mohd Hazwan bin Jaludin ("Hazwan") are and have been the defendant's only directors and shareholders. There is no evidence of Zainol ever being a director or shareholder of the defendant.

[7] The plaintiff's mark was registered on 11 March 2013 in class 29 in
I respect of meat, fish, poultry, vegetables, jams, edible oil, chicken burger, meat burger and fish burger. The defendant's mark was registered on 8 October 2018 in class 35 in respect of retail store and convenience store. The plaintiff's mark is for goods; the defendant's mark is for services.

[8] To defend the registration of the defendant's mark against the plaintiff's application for invalidation and removal of it from the Register, the defendant predominantly relies on a letter dated 3 September 2018 ("consent letter") that the plaintiff issued on its letterhead, and by that letter, on s. 47(4) of the Act.

[9] That letter reads:

Az-Zain

Muntaz Meat & Marine Foods Sdn Bhd (735011-U)
No. 3A, Jalan Villarya 2/1,
Kawasan Perindustrian Villarya 2,
43500 Semenyih Selangor
Tel: 03-8723 1725/8720 Fax: 03-8723 1726
Email: azzain.muntaz@yahoo.com

Tarikh : 3 September 2018

KEPADA YANG BERKENAAN

PER: KEBENARAN MENDAFTARKAN CAP DAGANGAN AZZAINMART

Saya Dr.Mohamad Zainol bin Ahmad Haja 580502-07-5729 adalah Pengarah Urusan - Muntaz Meat & Marine Foods Sdn Bhd merupakan pemilik bagi cap dagangan 2015003678 dengan ini memberi kebenaran kepada YAQIN MART SDN BHD (1200250-K) untuk tujuan pendaftaran cap dagangan "AzZainMart" bagi perkhidmatan: "Retail store, convenience store; all included in class 35" di Malaysia.

Saya boleh dihubungi di talian 011-650 4040.

Sekian, terima kasih.

Yang benar,

(DR. MOHAMAD ZAINOL BIN AHMAD HAJA)
Pengarah Urusan

[10] Section 47(4) of the Act provides:

> The registration of trademark may not be declared invalid under subsection (3) if the proprietor of that earlier trademark or earlier right has consented to the registration.

[11] In the 'pernyataan bertulis pendaftar cap dagangan' dated 13 January 2023 ("Registrar's statement"), apart from explaining how the defendant's mark was registrable under the provisions of the Trade Marks Act 1976 (in force at the time), the Registrar also revealed in the last two paragraphs of para. 8.4 of the Registrar's statement that the consent letter was submitted to it on its request.

[12] In spite of this, the plaintiff still insists that the defendant's mark ought to be invalidated and removed from the register. In summary, the plaintiff's reasons (outside of the consent letter) are:

(i) the plaintiff is the common law proprietor of the "Az-Zain" mark;

(ii) the plaintiff's mark was registered first, over five years before the defendant's mark;

(iii) the similarities between the defendant's mark to the plaintiff's mark means that the defendant's mark is likely to deceive or cause confusion to the public into believing there to be a connection between the two; and

(iv) there was fraud and/or misrepresentation in the registration of the defendant's mark, in that:

(a) Zainol was not authorised to issue the consent letter or give any permission to the defendant to use the plaintiff's mark; and

(b) the defendant did not produce any resolution of the plaintiff's board to authorise the defendant to use the plaintiff's mark or authorise Zainol to issue the consent letter.

[13] The provisions of the Act which the plaintiff relies on are ss. 23(5)(a), 24(3)(b), 47(3)(a) and 47(6) of the Act. They each provide:

> Section 23(5)(a)
>
> (5) In addition to the grounds in subsections (1), (3) and (4), the Registrar shall refuse to register a trademark based on any of the following absolute grounds for refusal of registration:
>
> (a) if the use of the trademark is likely to deceive or cause confusion to the public or contrary to any written law;
>
> Section 24(3)(b)
>
> (3) The Registrar shall refuse to register a trademark if:
>
> (b) it is identical with or similar to a well-known trademark which is registered in Malaysia and it is to be registered for goods or services which are not identical or not similar to those in respect of which the well-known trademark is registered and:
>
> (i) the use of the trademark in relation to those goods or services would indicate a connection between those goods or services and the proprietor of the well-known trademark;

(ii) there exists a likelihood of confusion on the part of the public because of such use; and

(iii) the interests of the proprietor of the well-known trademark are likely to be damaged by such use.

Section 47(3)(a)

(3) The registration of trademark may be declared invalid by the court upon the application by an aggrieved person on the ground that:

(a) there is an earlier trademark under subsection 24(1), (2) or (3)

Section 47(6)

(6) The registration of trademark may be declared invalid by the court upon the application by an aggrieved person or the Registrar on the ground of fraud in the registration or that the registration was obtained by misrepresentation.

[14] The plaintiff further relies on *"ELBA" SpA v. Fiamma Sdn Bhd* [2008] 8 CLJ 202; [2008] 3 MLJ 713 and *Regent Pumps Pty Ltd & Anor v. Keylargo Industrial Sdn Bhd* [2009] 2 CLJ 303 to support its allegation that the defendant procured the registration of the defendant's mark by fraud and/or misrepresentation.

[15] In my view, if it is true that the plaintiff had consented for the defendant to register the defendant's mark, then it would not matter if the plaintiff is the common law proprietor of the "Az-Zain" mark, or that the plaintiff's mark was registered first, or that there are similarities between the defendant's mark to the plaintiff's mark that are likely to deceive or cause confusion to the public in believing there is a connection between the two. Logically, by giving that consent, the plaintiff knew and acknowledged that there are similarities between the defendant's mark and the plaintiff's mark but nevertheless gave that consent to the defendant, unconcerned of any deception or confusion to the public that there may be a connection between them.

[16] It was therefore a matter of determining from the facts and circumstances of the case whether there was such consent.

[17] As I had mentioned earlier, the plaintiff contends that Zainol was not authorised to issue the consent letter or give any permission to the defendant to use the plaintiff's mark, and the defendant did not produce any resolution of the plaintiff's board to authorise the defendant to use the plaintiff's mark or authorise Zainol to issue the consent letter. Owing to this, the plaintiff alleges that there was fraud and/or misrepresentation in the registration of the defendant's mark.

[18] I rejected the plaintiff's contentions for several reasons.

[19] Firstly, the plaintiff does not deny the existence of the consent letter or that the plaintiff had issued it to the defendant. Its only objection is to Zainol's authority to issue it, alleging that it was issued without the plaintiff's knowledge or without being backed by a board resolution. The burden was therefore on the plaintiff to prove that Zainol did not have the authority to issue it.

[20] Even though the plaintiff did adduce an order dated 9 November 2018 obtained in Shah Alam High Court Originating Summons No: BA-24NCC-147-11-2018 restraining Zainol from, *inter alia*, being a director of the plaintiff and attending to its affairs, that order was clearly obtained after the consent letter was issued on 3 September 2018. This means that, at face value, Zainol had the authority to issue the consent letter at the time it was issued.

[21] Diverting momentarily from the analysis, I would like to highlight the categorical failure of the plaintiff to disclose in the afidavit sokongan two crucial matters in regard to that order. Firstly, it was only an order obtained on an application heard *ex parte*, and not, as the afidavit sokongan suggests, one with any finality. Secondly, even though the Shah Alam High Court directed the application to be heard *inter partes* on 22 November 2018, there was no mention of what transpired at that hearing.

[22] The point is this. Since the originating summons is designed for the determination of the plaintiff's claim summarily on affidavit evidence, it is therefore incumbent on the plaintiff to make full disclosure of all matters on which it relies, in this case the true nature of that order and the outcome of any subsequent proceedings in relation to it. Relating only half the story naturally inclines the court to question the veracity of the allegations made and wonder whether the plaintiff is purposely withholding vital information to steal a march on the other side. Full disclosure becomes even more imperative here where the defendant was not even a party to the proceedings in which that order was obtained. As such, how can it possibly be reasonably expected to respond to the plaintiff's allegation. In this scenario, only Zainol could. But he is not a party here.

[23] Secondly, reverting back to the analysis. As I said earlier, it was the plaintiff's practice and marketing strategy to allow its agents and distributors from way back in 2006 to use the plaintiff's mark on the signboard of their business premises. Over 200 retail outlets did that. There was no hint or suggestion from the plaintiff that board resolutions were needed for any of that. The plaintiff cannot blow hot and cold, and pick the scenarios that suits it or to pursue an agenda that board resolutions are necessary. Further, on record Mumthaj was not even a director then; only Zainol was.

[24] Thirdly, the plaintiff admitted in para. 21 of its pernyataan tuntutan terpinda filed in Kuala Lumpur Civil Suit No: WA-22iP-2-01-2020 ("the 2020 civil suit") (which I shall deal with in greater detail later), that Zainol was the plaintiff's managing director from 2006 to 2018. As managing director, he had that authority.

[25] Fourthly, as Jaludin, Tengku Harishah, Hazwan, Yakin Preserved Food and Yaqin Mart Sdn Bhd had been dealing with Zainol and the plaintiff since 2007 for around 15 years before this action was filed, it was only reasonable to hold that they were entitled to assume and believe that the consent letter was genuine. The plaintiff's suggestion that the breakdown in the marriage of Zainol and Mumthaj's marriage can somehow be used to evidence of fraud or wrongdoing by the defendant is misguided; that divorce was highly personal between them and had nothing to do with the defendant.

[26] Fifthly, that assumption and belief that the consent letter was genuine is further backed by the rule in *Turquand's* case ("*Turquand's* rule"), also known as "the indoor management rule".

[27] *Turquand*'s rule has its genesis in the case of *Royal British Bank v. Turquand* [1843-60] All ER Rep 435. In that case the Royal British Bank claimed against the respondent, a joint-stock company, on a bond signed by two of its directors under its seal. The company tried to evade liability by contending that there was no board resolution authorising the making of the bond as per a deed of settlement. Lord Jervis CJ said:

> We may now take for granted that the dealings with these companies are not like dealings with other partnerships and that parties dealing with them are bound to read the statute and the deed of settlement. But they are not bound to do more. And the party here, on reading the deed of settlement, would find not a prohibition from borrowing, but a permission to do so on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorising that which on the face of the document appeared to be legitimately done.

[28] The essence of *Turquand*'s rule is that it protects outsiders dealing with a company in good faith who are entitled to assume that acts within its constitution and powers have been properly performed, and are not required to inquire whether acts of internal management have been regular.

[29] In *Pekan Nenas Industries Sdn Bhd v. Chang Ching Chuen & Ors* [1998] 1 CLJ 793; [1998] 1 MLJ 465, the Federal Court elucidated at great length on the application and perimeters of *Turquand*'s rule. Select passages relevant to our case from the illuminating judgment of Edgar Joseph Jr FJ are set out below:

A To put it another way, such an outsider may rely on the rule in *Turquand*'s case which, when it applies, gives rise to an irrebuttable presumption, so that the company concerned is debarred from establishing or relying on the fact that the proceedings were irregular and unauthorised.

The rule in *Turquand*'s case cannot, however, be invoked by an outsider B who knows or ought to know that there is an irregularity.

More particularly, outsiders dealing with a company who know that some relevant procedure internal to the company has not been followed cannot invoke the benefit of the indoor management rule (see *Howard v. Patent Ivory Manufacturing Co* (1888) 38 Ch D 156). This is an exception to the rule in *Turquand*'s case and the burden of establishing it lies on the party C invoking the exception ...

Furthermore, dealing with a company could also be affected by knowledge of facts which would put a reasonable person on inquiry; in other words, they would be deemed to know what a reasonable person would infer from known facts. D

So also, an outsider dealing with a company cannot invoke the benefit of the *Turquand* rule if he could or should in the circumstances have discovered the defect by inspecting the compulsory documents filed at the Registry of Companies which are open to public inspection.

The material time at which there must be knowledge or the means of E knowledge is the time of entry into the transaction.

Whether in any given case the person dealing with a company is put upon inquiry must depend upon all the particular circumstances.

The policy underlying the *Turquand* rule is business convenience and the F formulation and application of the rule 'call for a fine balance' (*Northside Developments*' case) between the competing interests of outsiders contracting with companies on the one hand, and innocent creditors and shareholders of companies, on the other.

[30] In *Ooi Meng Khin v. Amanah Scotts Properties (KL) Sdn Bhd & Another Appeal* [2014] 1 LNS 719; [2014] 6 MLJ 488, Abang Iskandar JCA (now CJ G (M)) said:

The rule in *Turquand*'s case is a presumption of regularity. In other words, a person dealing with the company is entitled to presume that all the internal procedures of the company have been complied with. This is a practical approach to solving problems facing outsiders because an H outsider would have difficulty to discover what is going on in the company. As such, the *Turquand*'s rule is sometimes referred to as the indoor management rule.

The applicability of the *Turquand*'s rule is fully circumscribed, in that it is only applicable in aid of a person who deals with a company in good faith. I It is a rule so prescribed to protect the innocent party doing *bona fide* business with a company. It has been noted that even if the party who seeks to avail himself of this rule in his favour, does not have actual

knowledge that an irregularity has happened, that party will still be precluded from availing himself if the circumstances were such as to put him on inquiry he failed to make.

[31] Applying *Turquand*'s rule here, unless the plaintiff was able to establish that the defendant knew or ought to have known or suspected that the consent letter was irregular or may be tainted, the defendant was entitled to assume that the consent letter was genuine and that Zainol had the authority to issue it.

[32] Here, the consent letter was signed by Zainol as the plaintiff's 'pengarah urusan', whom the plaintiff itself concedes that Jaludin, Tengku Harishah and the defendant had been dealing with since 2007. I find it hard to reconcile Mumthaj's allegation that she was heavily involved in the business affairs of the plaintiff and at the same time did not know of the commercial relationship between the plaintiff and Jaludin, Tengku Harishah and the defendant that had been cultivated since 2007.

[33] Equally, I can also reasonably assume that Jaludin, Tengku Harishah and the defendant knew that Zainol and Mumthaj were the only directors and shareholders of the plaintiff. As there is no evidence whatsoever that the defendant knew of or was informed of their divorce, it is reasonably safe to assume that the defendant might still have believed that they were still married when the consent letter was issued. In fact, on the evidence, the defendant was first alerted to their divorce on or around 2 November 2020 when the plaintiff amended its statement of claim in the 2020 suit to plead that fact. (I shall come to what I call the 200 Suit in due course).

[34] Further, as I said earlier, the Registrar's statement discloses that the consent letter was a product of the Registrar's request for one.

[35] The Registrar's statement was submitted to this court on the request of the plaintiff's solicitors. It reports that the defendant applied to register the defendant's mark on 8 October 2018 and, true to its practice and procedure, the Registrar analysed its registrability *vis-a-vis* the provisions of TMA 1976 that was in force at the time (see paras. 5 to 8.3 of the Registrar's statement).

[36] In para. 8.4 of the Registrar's statement, she then said that a check on the Sistem Pengurusan Harta Intelek disclosed the plaintiff's mark, and the close resemblance between the two. So, the Registrar issued a 'surat bantahan CD70' on 4 April 2019. The defendant then provided its evidence and written submission on 23 May 2019. The Registrar then requested for the consent in writing from the plaintiff. This is what the Registrar said:

Berdasarkan hujahan yang dikemukakan, pihak Pendaftar telah mengeluarkan surat kelulusan bersyarat meminta pemohon mengemukakan surat kebenaran (consent letter) daripada pemilik Cap Dagangan Konflik iaitu Mumtaz Meat & Marine Foods Sdn Bhd bagi membenarkan Cap Dagangan Berdaftar menggunakan cap dagangan yang hampir sama.

> Pada 03 September 2019, pemohon telah mengemukakan surat kebenaran penggunaan (consent letter) yang menggunakan kepala surat Mumtaz Meat & Marine Foods Sdn Bhd dan surat tersebut telah ditandatangani oleh Dr Mohd Zainol bin Ahmad Haja atas kapasiti Pengarah Urusan. Berdasarkan maklumat Suruhanjaya Syarikat Malaysia (SSM) yang dikemukakan, didapati bahawa Dr Mohd Zainol bin Ahmad Haja merupakan salah seorang pengarah kepada syarikat Mumtaz Meat & Marine Food Sdn Bhd. Berdasarkan maklumat ini dan surat kebenaran yang dikemukakan, adalah diputuskan bahawa Cap Dagangan Konflik No. 2013003678 boleh digugurkan.

[37] In para. 9 of the Registrar's statement, the Registrar concluded of the defendant's mark:

> Berdasarkan penjelasan di perenggan 8 di atas, Pendaftar percaya bahawa Cap Dagangan Berdaftar ini telah didaftarkan oleh Pendaftar selaras dengan kehendak undang-undang di bawah ACD 1976 dan PCD 1997.

[38] Then, after reviewing the originating summons, affidavits and written submissions of the parties in this action, in para. 12 of the Registrar's statement, the Registrar further concluded of the defendant's mark:

> Pendaftar juga sesungguhnya percaya bahawa pada ketika Cap Dagangan Berdaftar ini didaftarkan, ia telah berjaya memenuhi kesemua kehendak pendaftaran di bawah ACD 1976. Oleh itu pendaftaran Cap Dagangan Berdaftar ini telah dibuat oleh Pendaftar secara teratur mengikut peruntukkan undang-undang ketika itu.

[39] Just to be clear, I am not for one moment suggesting that, since the Registrar opined that the registration of the defendant's mark was validly registered, then the court is bound to accept and go along with that finding. It is still incumbent on this court to come to its own conclusion and findings on the evidence and on the law.

[40] What I am saying is that the Registrar's statement shows that the defendant did not submit the consent letter with its initial application, but instead adduced it on the Registrar's request, after obtaining it from Zainol. This mitigates against any allegation of fraudulent intent from the outset by the defendant.

[41] Sixthly, to bring the allegation of fraud home against the defendant, the plaintiff would have to allege and prove that the defendant had colluded or conspired with Zainol to procure the consent letter and procure registration of the defendant's mark. The plaintiff failed altogether to even plead or allege collusion or conspiracy against them, let alone mention any particulars.

[42] In the plaintiff's afidavit sokongan, Mumthaj makes several allegations that the plaintiff did not know of the dealings with Jaludin and/or the defendant. She unfortunately makes the fundamental mistake of thinking

that, by virtue of being the director and majority shareholder of the plaintiff, that she and the plaintiff are one and interchangeable. The basic concept of separate legal entity makes that a fallacy.

[43] I would also distinguish the cases of *"ELBA" SpA v. Fiamma Sdn Bhd* [2008] 8 CLJ 202; [2008] 3 MLJ 713 and *Regent Pumps Pty Ltd & Anor v. Keylargo Industrial Sdn Bhd* [2009] 2 CLJ 303 the plaintiff relies on.

[44] In *Elba Spa*, the court actually dismissed the plaintiff's allegation of fraud against the defendant.

[45] In *Regent Pumps*, the court did find fraud by the defendant in registering itself as the owner of the plaintiff's trademark. However, that was because the documentary evidence showed that, though the plaintiff had authorised the defendant to apply to register the mark, that authorisation explicitly required the defendant to apply to register the trademark on behalf of the plaintiff with the plaintiff (and not itself) as the proprietor. It was the defendant's act of registering itself as the proprietor of the mark instead of the plaintiff that the court found the defendant fraudulent.

[46] Here, the consent letter unequivocally consents to the defendant registering the defendant's mark.

[47] For good measure, I also looked at the decision of NH Chan J (as he then was) in *Hai-O Enterprise Bhd. v. Nguang Chan* [1992] 4 CLJ 1985; [1992] 2 CLJ (Rep) 436, which was not cited by the plaintiff but referred to by Ramly Ali J (as he then was) in *Regent Pumps*. That case involved the registration of the defendant as the owner of a trademark, who was in reality merely an importer *simpliciter* of the products of the foreign manufacturer who actually owned the trademark. Even though the foreign manufacturer knew of it, the court still regarded the registration of the defendant as owner of the trademark as having been obtained by fraud on the Registrar and the Malaysian public. Here, the facts are decidedly different.

[48] Lastly, if the plaintiff wishes to disavow the validity of the consent letter by alleging that Zainol had no authority to issue it and had not obtained a board resolution, then there must be direct proceedings specifically for that purpose. The plaintiff cannot use this action to collaterally challenge the validity of the consent letter, especially without bringing Zainol in as a party. The defendant, not being involved in the internal affairs of the plaintiff or of the dynamics or the disputes between Mumthaj and Zainol, would not know of the internal goings on in the plaintiff company or of the deterioration in the relationship between Zainol and Mumthaj. Unless of course there was evidence that they did know or that there were circumstances that would reasonably put them on inquiry. There were none. The defendant therefore understandably responds that it has no knowledge of the plaintiff's allegations pertaining to the consent letter. That lack of knowledge cannot fairly be used against the defendant.

[49] This last ground also leads in nicely with the second ground I dismissed the plaintiff's application, namely *res judicata*.

Second Ground: Abuse Of Process On The Doctrine Of *Res Judicata*

[50] Ironically, it was the plaintiff who led the crucial evidence that enabled this court to invoke the doctrine of *res judicata*.

[51] In January 2020, the plaintiff filed Kuala Lumpur Civil Suit No: WA-22IP-2-01-2020 ("the 2020 civil suit") against Azzainmart Sdn Bhd, Jaludin, Tengku Harisah, Zainol and Hazwan, and included as a defendant Nor Hidayah binti Jaludin ("Nor Hidayah"). It was an action for trademark infringement and passing off. The plaintiff alleged, *inter alia*:

(i) the plaintiff's business which started in 2006 and the registration of the plaintiff's mark;

(ii) the plaintiff allowing its agents and distributors of the plaintiff's product to use the plaintiff's mark on their business premises;

(iii) the incorporation of Azzainmart Sdn Bhd on 4 February 2019 and the use of the name 'Azzainmart' on its business premises;

(iv) the resemblance and similarities between the plaintiff's mark and the defendant's mark;

(v) the use of the plaintiff's mark for commercial gain and without the plaintiff's consent;

(vi) the divorce of Zainol and Mumthaj in 2018;

(vii) the consent letter and the plaintiff's challenge to its validity; and

(viii) the likely deceit and confusion to the public by the simultaneous use of the plaintiff's mark and the defendant's mark.

[52] All of these allegations are eerily familiar to the allegations made in this action.

[53] In paras. 18 and 19 of their amended defence and counterclaim dated 23 November 2020 ("the amended defence and counterclaim"), all the defendants (except for Zainol), pleaded as follows:

> 18. Pada sekitar bulan Ogos 2018, Defendan-Defendan telah memohon kepada Dr Zainol untuk menggunakan nama "AzZainMart" sebagai nama perniagaan Defendan-Defendan dan Dr Zainol selaku pengarah urusan Plaintif telah mempersetujui perkara tersebut dan memberi kebenaran secara bertulis untuk tujuan pendaftaran cap dagangan "AzZainMart" di bawah kelas 35 melalui surat bertarikh 03.09.2018;
>
> 19. Pada 08 Oktober 2018, Defendan-Defendan telah membuat permohonan di Perbadanan Harta Intelek Malaysia untuk mendaftar cap dagangan "AzZainMart" di bawah kelas 35 di mana permohonan tersebut

telah disetujuterima oleh Perbadanan Harta Intelek Malaysia pada 11.12.2019. Butir-butir dan bukti-bukti lanjut berkenaan perkara tersebut akan dikemukakan semasa perbicaraan kelak.

[54] On 8 April 2022 (just weeks after this action was filed), Mohd Radzi J dismissed the plaintiff's claim in the 2020 civil suit. The judgment records that the full trial took place over several days in October 2021 and November 2021.

[55] In *Henderson v. Henderson* [1843] 3 Hare 100, 67 ER 313, the first of two oft-quoted cases on *res judicata*, Wigram VC said:

> In trying this question, I believe I state the rule of the court correctly, when I say, that where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. *The plea of res judicata applies, except in special case, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.*(emphasis added)

[56] The second in *Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783; [1995] 3 MLJ 189. In selected passages from that case, Peh Swee Chin FCJ said:

> What is *res judicata*? It simply means a matter adjudged, and its significance lies in its effect of creating an estoppel *per rem judicatum*. When a matter between two parties has been adjudicated by a court of competent jurisdiction, the parties and their privies are not permitted to litigate once more the *res judicata*, because the judgment becomes the truth between such parties, or in other words, the parties should accept it as the truth; *res judicata pro veritate accipitur*. The public policy of the law is that, it is in the public interest that there should be finality in litigation – interest *rei publicae ut sit finis litium*. It is only just that no one ought to be vexed twice for the same cause of action – *nemo debet bis vexari pro eadem causa*. Both maxims are the rationales for the doctrine of *res judicata*, but the earlier maxim has the further elevated status of a question of public policy.
>
> Since a *res judicata* creates an estoppel *per rem judicatum*, the doctrine of *res judicata* is really the doctrine of estoppel *per rem judicatum*, the latter being described sometimes in a rather archaic way as estoppel by record. Since the two doctrines are the same, it is no longer of any practical importance to say the *res judicata* is a rule of procedure and that an estoppel *per rem judicatum* is that of evidence. Such dichotomy is apt to give rise to confusion.

A The starting point ought to be the celebrated passage by Wigram VC in the case of *Henderson v. Henderson* (1843) 3 Hare 100 at p 115 ...

Bearing in mind the well-known relevancy of a previous judgment in barring a second suit, *eg,* please see s. 40 of the Evidence Act 1950, it will be readily understood that when Wigram VC spoke of 'points', the points
B should actually include causes of action, or all causes of action which one of the two parties has against the other, based on, or substantially on the same facts or issues, and not just all issues of law or of fact that are in dispute between the parties.

Thus, there are in fact two kinds of estoppel *per rem judicatum*. The first
C type relates to cause of action estoppel and the second, to issue estoppel, which is a development from the first type.

The cause of action estoppel arises when rights or liabilities involving a particular right to take a particular action in court for a particular remedy are determined in a final judgment and such right of action, *ie*, the cause of action, merges into the said final judgment; in layman's language, the
D cause of action has turned into the said final judgment. The said cause of action may not be relitigated between the same parties because it is *res judicata*.

There is one school of thought that issue estoppel applies only to issues actually decided by the court in the previous proceedings and not to issues
E which might have been and which were not brought forward, either deliberately or due to negligence or inadvertence, while another school of thought holds the contrary view that such issues which might have been and which were not brought forward as described, though not actually decided by the court, are still covered by the doctrine of *res judicata*, *ie,* doctrine of estoppel *per rem judicatum*.

F We are of the opinion that the aforesaid contrary view is to be preferred; it represents for one thing, a correct even though broader approach to the scope of issue estoppel. It is warranted by the weight of authorities to be illustrated later.

It is completely in accord or resonant with the rationales behind the
G doctrine of *res judicata*, in other words, with the doctrine of estoppel *per rem judicatum*. It is particularly important to bear in mind the question of the public policy that there should be finality in litigation in conjunction with the exploding population; the increasing sophistication of the populace with the law and with the expanding resources of the courts
H being found always one step behind the resulting increase in litigation.

It is further necessary at this stage to understand the import of the words in the said famous statement, *ie,* ... every point which properly belonged to the subject of litigation which Somervell LJ explained in *Greenhalgh v. Mallard* [1947] 2 All ER 255 at p. 257 as follows:

I > ... *res judicata* for this purpose is not confined to the issues which the court is actually asked to decide, but ... it covers issues or facts which are so clearly part of the subject matter of the litigation and

> so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.
>
> A word of caution is required about the words 'exercising reasonable diligence' in the said famous passage [in *Henderson v Henderson* (1843) 3 Hare 100]. The words do not, in our view, necessitate a mental exercise of making a finding as to whether there was diligence, or reasonable diligence, in the earlier failure to bring in at the previous trial, the issues which should have been brought in the earlier action and which were not, or in asserting all other causes of action arising out of the same facts in the earlier action and which were not.
>
> The words ought to be understood as a gentle rebuke for the failure aforesaid, *ie*, despite the fact that the party had the opportunity of bringing forward all such issues or asserting all such causes of action; and the words are not meant to impose a pre-condition for applying the doctrine of *res judicata* but are meant to say that the said non-bringing of the issues would count in any event irrespective of whether the said failure was or was not deliberate or due to inadvertence or negligence. Otherwise, the words would have virtually all but destroyed the efficacy of estoppel *per rem judicatum*.
>
> Another source of small confusion is the rule that generally an estoppel, of which an estoppel *per rem judicatum* is a kind, as the name implies, has to be pleaded. But in *Superintendent Of Pudu Prison v. Sim Kie Chong* [1986] 1 MLJ 494 at p. 498, Abdoolcader SCJ held to the effect that the court has the inherent jurisdiction to dismiss an action by applying the doctrine of *res judicata* against a party even if it has not been pleaded. We venture to think the reason for the *ratio* is that an estoppel or exclusion of evidence based on a question of public policy, *ie*, in this case, the question of public policy that there should be finality in litigation, is more vigorous in excluding evidence and need not be pleaded, unlike an ordinary estoppel which should be pleaded.

[57] The point is this. Almost a year before the full trial of the civil suit, the plaintiff would have known and been alerted from the amended defence counterclaim in the 2020 civil suit of the registration of the defendant's mark and of the consent letter. There was ample time to have requested for particulars and documents, amended the claim to bring the defendant here as a party to the civil suit, and bring the claim it brings here in the civil suit. It was a related claim. In short, the challenge to the defendant's mark was something that could have and should have been brought there.

[58] I would further note that, in the 2020 civil suit, the plaintiff added Zainol as the sixth defendant some ten months after it was filed. This clearly shows that the plaintiff knew that amending the writ and claim and adding parties were options available to it. It could easily have done the same with the defendant here, more so when the individual directors and shareholders of the defendant here were already parties to the 2020 civil suit.

[59] The plaintiff contends that the doctrine of *res judicata* is inapplicable here because the parties in the 2020 civil suit were different, *ie*, that the defendant here, Yaqin Mart Sdn Bhd, was not a party to the 2020 civil suit. It further contends that the evidence of the registration of the defendant's mark and the consent letter were only adduced in the defendants' bundle of documents during the trial in the 2020 civil suit.

[60] In my view, that does not offer the plaintiff any respite. There was time and opportunity for the plaintiff to bring its case against the defendant here in the 2020 civil suit, and discover those documents relating to the registration of the defendant's mark.

[61] Furthermore, Jaludin, Tengku Harishah and Hazwan who have all been the only directors and shareholders of the defendant here, were made defendants in the 2020 civil suit. They are a strong nexus between both actions.

[62] The contention that the defendant here was not a party to the 2020 civil suit is further easily rebutted by the case of *Dato' Sivananthan Shanmugam v. Artisan Fokus Sdn Bhd* [2015] 2 CLJ 1062, in which Idrus Harun, JCA (as His Lordship then was) said (in paras. 22 to 25 of the judgment after referring to the *Asia Commercial Finance* case:

> A pertinent question which may inevitably be asked is whether there is any limit which should be put on the application of the doctrine of issue estoppel. We raise this question because, contrary to the above requirement that the parties to the judicial decision are the same persons as to the parties to the proceedings in which the issue estoppel is raised, the parties in this appeal are completely different from the parties in the HTF suit.
>
> Having said that, we digress at this point from the above question to consider the nature of the claims in, and circumstances leading to the HTF suit and the present action and thus the plea of *res judicata* and estoppel. We will return later to the above question.
>
> The HTF suit according to the respondent, is a cheque action based on the Bills of Exchange Act 1949. The claim arose when the cheque dated 30 December 2011, issued for the sum of RM2.3m to HTF by Cosmotine was dishonoured. The present claim by the respondent against the appellant, on the other hand, was also for the recovery of the said sum but premised on the breach of contract when the appellant and KAH were alleged to have breached the agreement. Clearly the two actions were based on two different causes of action.
>
> However, upon careful study of the statement of defence of Cosmotine in the HTF suit and the affidavits in relation to HTF's application to enter summary judgment in respect of the HTF's suit, we have no hesitation in holding that the facts in that case and in the present appeal are identical.

Thus in whatever forms the two claims are made or described, be it the cheque action or for the breach of contract, the claims are not fundamentally different as it arose from the agreement where the sum of RM2.3m was purportedly to have been paid by HTF to Cosmotine, pursuant to the agreement for the purpose which we have dealt at the beginning of our judgment and when the JV agreement failed to materialise, HTF presented the cheque to the bank for payment but was dishonoured.

Since the demand for the refund was not met by Cosmotine, HTF commenced the action against Cosmotine while the respondent commenced the action against the appellant and KAH. Both suits claimed for the same amount of money to be paid by Cosmotine in the HTF suit and the appellant and KAH in the present action.

It is manifestly clear therefore, that both cases arose from the same set of facts, background, issues and circumstances while the reliefs claimed are consequent to the agreement. On the contrary, we do not detect any real or glaring difference in both cases. There is indeed a mutual or privity of interest between the appellant and Cosmotine in both civil suits. Furthermore, both cases involved same witnesses and same set of documents.

Now reverting to the question we raised above, it is important to ask whether it is an inflexible rule that the parties to the judicial decision must be the same persons as the parties to the proceedings in which the estoppel is raised. Before stating our answer to this question consideration of the local and foreign authorities is necessary.

In *North West Water Ltd v. Binnie & Partners (A Firm)*, three defendants namely the consultant engineers, the water authority and the contractors were sued for negligence but only the consultant engineers were wholly found to be negligent. In subsequent separate proceedings where the water authority issued proceedings against the consultant engineers based on contract and negligence to recover damages, the court stated that consideration of the authorities reveal two schools of thought on the issue of the limits which should be put on the application of the doctrine of estoppel.

One approach was called the broad one which held that the true test of an issue estoppel was whether for all practical purposes the party seeking to put forward some issue had already had that issue determined against him by a court of competent jurisdiction, even if the parties to the two actions were different. The conflicting approach was to confine issue estoppel to that species of estoppel *per rem judicatam* that may arise in civil actions between the same parties or their privies. Drake J in preferring the broader approach to a plea of issue estoppel said:

> In my judgment, this broader approach to a plea of issue estoppel is to be preferred. I find it unreal to hold that the issues raised in two actions arising from identical facts are different solely because the parties are different or because the duty of care owed to

different persons is in law different. However, I at once stress my use of the word 'solely'. I think that great caution must be exercised before shutting out a party from putting forward his case on the grounds of issue estoppel or abuse of process. Before doing so, the court should be quite satisfied that there is no real or practical difference between the issues to be litigated in the new action and that already decided, and the evidence which may properly be called on those issues in the new action.

In the present appeal, since the present action would undoubtedly involve going over precisely the same facts as in the previous HTF suit, and accepting the broader approach and the wider sense of *res judicata* as the preferred and correct legal position, the fact that the parties to this suit are different from the HTF suit does not disentitle the appellant to invoke the doctrine of issue estoppel to bar the respondent from relitigating a specific issue that had been decided in the prior separate action. The doctrine also applies to a non-party. It is therefore not necessary for parties to be the same in both actions. What the doctrine seeks to prevent is an abuse of the process of the court by attempting to make a double claim as well as allowing the plaintiff to relitigate its cause for the same relief and based on the same subject matter for which judgment had successfully been obtained in the HTF suit and to produce the same set of facts, the same witnesses and the same documents (see *Seruan Gemilang Makmur Sdn Bhd v. Badan Perhubungan UMNO Pahang Darul Makmur*).

We would emphasise at this juncture that the present action could have been included in the HTF suit by reason of the fact that the relief, evidence relied on and the witnesses are the same. In truth, the claims and relief sought in both suits share one common object which is the refund of RM2.3m from Cosmotine, the appellant and KAH which amount became liable to be refunded as a result of the alleged breach of the agreement. The only difference lies in the cause of action.

[63] In my view, as the allegations against the defendant here could so easily have been raised in the 2020 civil suit, and given the close nexus between the defendants in the 2020 civil suit and the defendant here, this action is caught by the doctrine of *res judicata* and is an abuse of the process of the court.

Conclusion

[64] In the final analysis, the plaintiff's attempt to invalidate the defendant's mark under s. 47 of the Act is felled by the consent letter and the doctrine of *res judicata*, the latter of which renders this action an abuse of process.

[65] I would also dismiss relief (a) of the OS for a declaration that the plaintiff is the owner and common law owner of the Az-Zain mark. That fact is not disputed.

[66] I therefore dismiss the OS with costs of RM15,000, subject to allocator.

[67] On the issue of costs, I note that, after this action was filed, the plaintiff was ordered wound up on 12 April 2022 on the petition filed by Zainol in Shah Alam High Court Companies Winding-Up No: BA-28NCC-303-07-2021. I further note that, on the application of Mumthaj (as contributory), the Jabatan Insolvensi Negeri Selangor gave its consent for this action to continue, and the plaintiff applied for and obtained an order *nunc pro tunc* on 8 December 2022 from the Shah Alam High Court to continue with this action.

[68] If the wound up plaintiff were ordered to bear the costs, the defendant would have to get in line with the other creditors of the company, as an unsecured creditor, and would possibly not get those costs resulting from successfully fending off the plaintiff's claim here.

[69] It is reasonable to assume that Mumthaj as contributory, was prepared to continue to prosecute and fund this action after the plaintiff was wound up only because she saw benefit not just to the plaintiff but also to her personally by doing so. But, on that same principle of separate legal entity, she would ordinarily not be personally liable for the costs.

[70] It seems rather unfair that she would have benefitted if the plaintiff won but emerge unscathed if the plaintiff lost, particularly when she chose to pursue the OS all along. In my mind, a contributory who wishes to continue a wound up company's fight must bear some consequence and downside if the company loses.

[71] Accordingly, it would only be fair and just for the costs of RM15,000 to be borne by Mumthaj. I so ordered.